IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 525 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI POPATSINH RANA

Versus

STATE OF GUJARAT

Appearance:

MR AKSHAY H MEHTA for Petitioners

MR ST MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT and

MR.JUSTICE J.R.VORA

Date of decision: 10/02/2000

COMMON ORAL JUDGEMENT : [Per: Vora, J.]

1. This Appeal is directed by the appellants against the judgment and order of conviction for the charges under Section 498(A), 306 of the Indian Penal Code read with Section 114 of the IPC passed by the learned Asst. Sessions Judge, Panchmahals at Godhra on 20th April, 1995 in Session Case No. 1 of 1995.

2. Facts leading to the prosecution and this Appeal are as under :

Janakben, belonging to village Gundi, was married to accused - appellant No.1 Aravindbhai Popatsinh Rana before about one year the incident took place i.e. 26th April, 1994. It is the case of the prosecution that Janakben had to suffer cruelty and torture from all the appellants i.e. from her husband - appellant No.1 and his parents - appellant No.2, appellant No.3. On 25th April, 1994, there was a marriage ceremony of the cousin of Janakben at village Gundi at the residence of her uncle. Therefore, brother of Janakben Gopalsinh came to the village Jambukheda for taking Janakben to village Gundi for attending the marriage of her cousin. According to the prosecution case, the appellants No. 2 and 3 did not allow Janakben to go with her brother Gopalsinh and misbehaved with Gopalsinh. Janakben taking Gopalsinh aside, confided him that the appellants are inflicting mental as well as physical torture, which is unbearable and if Gopalsinh did not take her away from her in-laws house, she was likely to commit suicide. Gopalsinh thereafter assured Janakben that on the next day, their father will visit Janakben's in-laws house. On the same day, as per the prosecution case, Janakben went to their field and consumed poisonous insecticides medicines, which are kept for agricultural purpose and ended her life. When she did not return from the field, her husband appellant No.1 Arvindbhai went to the field and found that Janakben was dead. Thereafter, on 26th April, 1994, appellant No.2 Popatsinh Ranmelsinh Rana declared before the Jambukheda Police Station in person that since Janakben was not invited and refused to go to the parental house for attending the marriage of her cousin taking this ill, she consumed poisonous medicines and has died. This was registered by PSI, Jambukheda, as Acidental death enquiry. Enquiry thereafter was conducted by PSI, Jambukheda Police Station and he recorded the statements and ultimately came to the conclusion that an offence, prima facie, against all the three appellants was made out under Section 498(A), 306

and 114 of the Indian Penal Code. Therefore, PSI himself filed a complaint before Police Station on behalf of the State and initiated investigation. It was revealed during the investigation that the marriage of Janakben lasted for about one year and incident took place on the late evening of 25th April, 1994. During this period of one year, Janakben had to undergo physical as well as mental torture for two reasons i.e. (1) she was labelled as unattractive, and (2) she could not during this year begotten an issue. A charge sheet was filed for the aforementioned charges before the Judicial Magistrate, First Class, Halol, but since he was incompetent to try the offences, he committed the case to the court of Sessions, Panchmahals at Godhra, and in turn, it was transferred to the Assistant Sessions Judge at Godhra and numbered as Session Case No. 1 of 1995. After recording of the evidence and hearing both the parties, learned Asst. Sessions Judge, Panchamahals at Godhra, came to the conclusion that all the three appellants - accused were guilty for the offence under Sections 498(A) read with Sec. 114 of the I.P.C. and, therefore, each of the appellants accused was sentenced to three years simple imprisonment and Rs.500/- as fine and in default, 15 days simple imprisonment while appellants No. 2 and 3 were acquitted for the charges of offence under Sec. 306 read with 114 of the Indian Penal Code and learned Assistant Sessions Judge found present appellant No.1 - accused No.1 to be guilty for the charges of offence under Section 306 of the Indian Penal Code also, for which the present appellant No.1 was sentenced to 10 years rigorous imprisonment and Rs. 1,000/- as fine, in default, one month simple imprisonment. This judgment was pronounced on 20th April, 1995.

3. Being aggrieved, the appellants - accused have filed the present Criminal Appeal being Criminal Appeal No. 525 of 1995 against the judgment and order of conviction.

4. Learned Advocate Mr. Akshay Mehta on behalf of the appellants contended that the evidence recorded is shabby and no allegations are levelled against the husband by the witnesses. Witnesses are relatives of the deceased and Investigating Officer has not undertaken an honest investigation and no statements of independent witnesses of neighbours or from village Jambukheda has been recorded. Mr.Mehta further urged that the prosecution has miserably failed to establish the cruelty as defined in Section 498(A) of the IPC, for which the evidence led is not credit worthy. Mr. Mehta further urged that there are contradictions amongst all three

important witnesses and, therefore, they ought not to have believed by the learned trial judge. He urged to allow the appeal and reverse the finding of conviction.

5. Learned APP Mr. S.T.Mehta vehemently supported the decision of the learned trial judge and contended that there cannot be further evidence than as already produced. He pressed on the evidence of Gopalsinh, brother of deceased Janakben, who had been to village Jambukheda for taking Janakben for attending the marriage and the deposition of Amratben wife of Gopalsinh, brother of the deceased. Mr.Mehta urged that there is no contradictions at all in the police statement and depositions of the witnesses. They are creditworthy and in no manner their creditworthiness could be impeached. Mr. S.T. Mehta, learned APP further urges that the Investigating Officer was honest and he has recorded the statement of neighbours, but unfortunately, while he was examined as a witness, he turned hostile and did not support the prosecution and he is PW-6 and Exh.25 Mulsincbhai Vestabhai Bariya. Learned APP urged to maintain the findings of learned Assistant Judge.

6. Considering the rival contentions and going through the record of this case entirely cardinal principles of criminal jurisprudence is that, however, the charge against the accused be grave or serious but the standard of proof in the criminal trial remains the same. Due to the stringent provisions like Sec. 498(A) of the Indian Penal Code or 113 (A) of the Evidence Act, the standard of proof which requires in a criminal trial would not change. The Supreme Court in the matter of STATE OF WESTBENGAL vs. JAISWAL, reported in AIR 1994 SC 1418, in para 14 observed as under :

" We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of S. 498A, IPC and S. 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the

accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard of proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Bater v. Bater, (1950) 2 All ER 458 at p. 459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter."

7. Now, we shall examine what is required to be proved by the prosecution as per the above laid standard by the Supreme Court for the charges under Section 498(A) and 306 of the Indian Penal Code. Section 498(A) in explanation defines "Cruelty". In the present case, we are concerned with the first proviso of definition of cruelty given under Section 498(A). Explanation-A clearly defines that the cruelty means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. We will have to carefully examine whether this cruelty is by evidence has been established beyond reasonable doubt by the prosecution and in this respect, this Court has taken a view in the matter of INDRASING M. RAOL vs. STATE OF GUJARAT, reported in 1999(3) Guj.LR 2536. The High Court in paras 6 and 7 of the judgment as under :

"6 The expression "cruelty" means and implies harsh and harmful conduct of certain intensity and persistence. It, therefore, covers the acts causing both physical and mental agony and torture, or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miseries and woes strongly stirring up her feeling that life is now not worth living and she should die, being the only option left. The provision of sec. 498-A therefore envisages intention to drag or force the woman to commit suicide by unabated, persistent and grave cruelty. In one case, therefore, the facts on record may constitute the cruelty showing required intention and in another case, it may not. The concept of cruelty, therefore, is found

different or diversifying from place to place, individual to individual, and also according to social and economical status of the person and several other factors. The Courts has, therefore, to becoming more heedful, chary and wary, exert and ascertain the cruelty and required intention on the basis of materials on record and also on the basis of the culture, ordinary sentimentality or sensitivity, capacity to tolerate, temperament, tendency, inter se honour, matrimonial relationships, state of health, dissension, interaction, or conflicting ideology, will to dominate, utter disregard of one's own obligation or intractability or habits as well as customs and traditions governing the parties and other governing forces, provided necessary acceptable evidence in this regard is available on record.

7. The word "harassment" is not defined in Sec. 498-A. The meaning of the word "harass" which can be found from the dictionary is to subject some one to unbearable, continuous or repeated or persistent unprovoked vexatious attacks, questions, demands, or persecutions, or brutality, or tyranny, or harm, or pain, or affliction, or other unpleasantness, or grave annoyance or troubles. In short what can be said is that Sec. 498-A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfil illegal demands of her husband or in-laws, and was not matrimonial cruelty, namely, usual wear and tear of matrimonial life. It should hardly be stated that the prosecution has to establish the charge beyond reasonable doubt. No doubt, arithmetical accuracy is not expected from the prosecution, but it has to adduce such evidence which would be credible leaving no room to any reasonable doubt; and pointing to the guilt of the accused.

8. Now the "cruelty" therefore means harsh and harmful conduct of certain intensity and persistence, which would drive a woman to commit suicide as she has no other option left.

9. Women in our country from ancient times are

highly respected and regarded in high esteem. Modernisation of society has not changed this culture. This is so because women are considered as key position of the society, they are respected and protected. Not only because they belong to weaker section of the society but for their role in a human life. Their self-respect, dignity, their sacrifice for the family and society are the inimitable qualities and it is their this grandeur, which is respected by the society. At the same time, it should not be lost sight of that females are temperamentally emotional and when their self-respect or dignity is eroded or is lowered down, they will immediately retaliate and react. At times when they cannot reconcile with their emotions and the circumstances around them, they in such case, would go to the extent to end her life. Therefore, the endeavour of the investigating agencies and the courts of law would be to scrutinise thoroughly in such cases whether the death is caused by a woman by her own accord due to her hypersensitiveness or she was driven to commit suicide with that intention as envisaged by Sec. 498(A) of the Indian Penal Code. Al beit, the distinction line between the two above is again thin but a thorough attempt to appreciate the facts and evidence would reveal a visible distinct line between the two. When it is found that a women is subjected to a cruelty as envisaged under Sec. 498(A) of the Indian Penal Code or a charge under Sec. 306 of the Indian Penal Code is proved beyond reasonable doubt, it becomes the duty of the Court to come down heavily on the accused. At the same time, it is the duty of the fact finding court to discern the distinct line between the two facts that whether a woman has committed suicide by her own accord or she has been driven to commit suicide with such "intention" as has been defined by Sec. 498(A) of the Indian Penal Code.

10. Now, reverting back to the facts of the case, prosecution has examined 7 witnesses to prove the above charges. PW2 Kiransinh Chauhan (Exh.13), PW3 Gopalsinh (Exh.14) are the brothers of the deceased Janakben. PW4 Amratben (Exh.15), is wife of PW2 Kiransinh. Uncle of the deceased Balvantsinh has been examined at Exh.l6 and independent witnesses PW6 Mulsinhbhai has been examined at Exh.25. Dr.Bharat Vyas has been examined at Exh.9 as PW1 to prove that the deceased Janakben ended her life by consuming poisonous medicines, which are used for agricultural purpose. Thereafter, the last witness Investigating Officer R.N. Rathod has been examined PW7 at Exh.26.

11. It has been proved beyond reasonable doubt that

Janakben died due to consuming of poisonous insecticides medicines, which is kept for agricultural use. This is an admitted fact. It is also an admitted fact that before one year of the incident, Janakben was married to Arvindbhai appellant No.1. It is also an admitted fact that on 25th April, 1994, a marriage ceremony had been arranged at village Gundi in the parental house of the deceased. Now, PW2 Kiransinh states that his wife Amratben PW4 conveyed him that whenever Janakben visited parental house, she complained about ill-treatment and mental and physical torture from the appellants while PW3 Gopalsinh is a witness, who states that on 25th April, 1994, he visited village Jambukheda at in-laws house of Janakben. Gopalsinh states that he wanted to take Janakben with him for attending the marriage of her cousin but, appellants No. 2 and 3 denied and state that if Janakben visits parental house on this occasion, she will not be allowed to return to his in-laws house. Gopalsinh has stated that while he was returning Janakben called him aside and confided that her father-in-law and mother-in-law are inflicting mental cruelty as well as physical torture and that if Gopalsinh did not take her from there she would end her life. Gopalsinh states that since they are highly reputed persons in the society, he would not be able to take Janakben but on the next day their father would visit the house of Janakben. As per Gopalsinh, he then came to his residence and conveyed everything to his father. While Amratben PW4 states that whenever Janakben visited parental house, she used to tell her that appellants No. 2 and 3 inflict mental and physical torture and used to insult her that she could not begotten an issue even a year is completed after marriage. Muljibhai PW6 - Exh.25 has not supported the case of the prosecution and the prosecution has confronted him with his statement before Police.

12. From the above evidence, we have to form a conclusion whether the prosecution has proved charges against the appellants beyond reasonable doubt. Considering the facts and the evidence in its entirety, what emerges is that the incident occurred on 25th April, 1994 when Gopalsinh went to village Jambukheda for taking his sister Janakben to attend the marriage. Therefore, a very important and vital fact to consider the probabilities and improbabilities of the happening of the events is a fact whether Janakben and her husband and in-laws were invited to attend the marriage of the cousin of Janakben. Though it is the prosecution case that Janakben refused Gopalsinh to take her for attending the marriage because they did not receive any invitation from uncle of Janakben or from the parents of Janakben. This

prosecution case is revealed from the complaint filed by PSI Rathod Exh.22, wherein he has specifically mentioned that Janakben had refused to participate in the marriage because there was no invitation to her in-laws. Further, the case of the prosecution is refuted in cross-examination of PW-6 (Exh.25) wherein also while witness was confronted with his police statement, he has alleged to have stated that appellants No. 1 and 2 refused to send Janakben to attend the marriage because they had no invitation. Now with this background, the evidence of Kiransinh, Gopalsinh and Amratben is put to the judicial scrutiny, it is clear that even if this is the prosecution case that the appellants did not get the invitation, all the three witnesses are silent on this fact in their evidence. This affects the creditworthiness of all the three witnesses and particularly when they deposed that the appellants inflicted cruelty and torture to Janakben. Further, if the evidence is scrutinised for the probabilities or improbabilities from the view of prudent man, as observed by the Supreme Court in State of W.B. v. Orilal Jaiswal (supra), it is clear that there were two reasons for which Janakben was subjected to cruelty. One of them is she was labelled as unattractive and another even after one year, she could not be got an issue. It is alleged that the marriage lasted for one year. As per the deposition of Amratben that during one year Janakben visited the parental house for six to seven times and all the times she complained of the cruelty. Therefore, it is the prosecution case that during this year there was continuous cruelty and the reason was she could not conceive issue. This is ex facie an improbable reason for inflicting cruelty because the course of nature is to be respected and nobody would expect that within such short span of time there was a definite possibility of conceiving a woman within a period of one year of wedlock or even as per prosecution case much earlier. Therefore, the prosecution case that Janakben was subjected to cruelty so she could not conceive is highly improbable, and the creditworthiness of the witnesses case on this count is impeachable. Had there been a span of wedlock for three to four years coupled with the allegation that there was cruelty on account of not conceiving, the fact was otherwise, but in this case, in such shorter time span, it is improper that for these reasons the appellants have inflicted cruelty and mental as well as physical torture on Janakben.

13. Evidence discloses that in the same month on 20th April, 1994, there was marriage in the family of appellants. It has been admitted by the witnesses

particularly PW2 - Exh.13 Kiransinh and PW3 - Exh. 14 Gopalsinh that in the marriage of appellants family, the family of Janakben's parents were invited and they joined on the occasion. This shows great cordial relationships between the parties and if there was any discord between Arvindbhai and deceased Janakben, the redress must have been discussed on that marriage. It is also in evidence that the parents of Janakben is well placed in the society and highly reputed. When this incident of Janakben's death occurred, at least 75 persons from village Gundi came to Jambukheda. If this is so, and if we consider that Janakben reported the fact of inflicting of cruelty and harassment to their parents, is it possible that her parents or brothers would not take any redress or would not attempt to convince the in-laws of Janakben or at least attempt to know the reason why Jankaben is subjected to cruelty? In ordinary course, when such a fact that the daughter is subjected to cruelty and ill-treatment is reported to the parents, the natural reaction of the parents would be to immediately contact the in-laws and try to know that at least who was at fault, but no evidence is coming forth from the prosecution witnesses that any such event had taken place or any such attempt was made by the parents of Janakben to persuade or to negotiate or to communicate with appellants in this respect, even then, the parents of Janakben were invited by the appellants to the marriage in the family of the appellants and the parents of Janakben joined the marriage on 20th April, 1994. This theory of prosecution therefore is highly improbable and the creditworthiness of the witnesses is doubtful.

14. Again, if the cruelty was so cruel as to force Janakben a statement to Gopalsinh when he visited on 25th April, 1994 that if Gopalsinh did not take her to the parental house, she would end her life. The natural conduct would be an immediate action on the part of the parents of Jankaben when they received such a communication from their daughter, but, nothing happens. On the contrary, evidence discloses that the brothers and parents enjoyed the marriage on that day, which was arranged at the residence of uncle of deceased Janakben. This also shows improbability of a fact that Janakben was subjected to cruelty.

15. When the evidence and the facts so scrutinised, it reveals that the evidence of the witnesses and their statements are not probable. Gopalsinh and Amratben both attempts to modulate the evidence to secure conviction of the appellants because the very vital factors of the event i.e. whether the appellants were invited to attend

the marriage of cousin of Janakben is concealed by the witnesses and, therefore, it clearly appears that the true version of the prosecution case is not revealed. Exh. 27 is an application of appellant No.2 submitted before Jambukheda PSI, in which he states that Janakben refused to go with Gopalsinh because neither she was invited nor her husband or in-laws were invited to attend the marriage. This vital aspect is concealed by the prosecution witnesses that neither Janakben nor her husband nor her in-laws were invited to attend the marriage of cousins of Janakben. Had the appellants were invited, then the question of Gopalsinh to visit Jambukheda on 25th April, 1995 to take Janakben would not have arisen at all and in those ordinary circumstances Janakben would have attended the marriage along with her husband and families of in-laws. But, Gopalsinh came to take Janakben to attend the marriage of her cousin clearly denotes that the husband and the in-laws were not invited to attend. A Hindu woman so sensitive for self-respect and dignity at her in-laws house would naturally feel that this incident would erode her honour and respect at her in-laws house. Therefore, in the circumstances, what is stated by appellant No.2 vide Exh.27 appears to be quite probable.

16. It is clear from the above discussion of evidence that probability is Janakben took ill. The fact that in marriage none of her in-laws family members were invited and she refused to go with Gopalsinh. She was so frenzied and berserk that she did not rest there and went to the field and ended her life on her own accord. When a woman in such circumstances as mentioned above, decided to end her life, hardly we could attribute intention on the part of the accused to drive her to commit suicide. Not only that the evidence reveals that before going to the field she asked the permission of in-laws and told that she was going to the field to collect grass and there she consumed poison. Evidence, as discussed above, falls short to establish the intention on the part of the accused to inflict that cruelty which drives her to commit suicide.

17. Learned Trial Judge, however, failed to appreciate this vital aspect of the case. Learned Trial Judge could not discern line between death by ending her life and death by forcing somebody else to commit suicide. Therefore, the learned Trial Judge committed an error in coming to the conclusion that accused No.1 i.e. appellant No.1 was guilty for the charges under Sections 306 and 498(A) of the Indian Penal Code and that the accused Nos. 2 and 3 i.e. appellants No. 2 and 3 are

guilty for the charges of offence under Section 498(A) of the Indian Penal Code. The evidence was not appreciated in a manner in which it was required to be appreciated keeping in mind all the attendant circumstances and probabilities and improbabilities resulting from the facts placed on record by the prosecution. Therefore, the finding of the trial judge requires to be reversed and appeal is required to be allowed.

18. In the result, the appeal is allowed. Judgment and order dated 20.4.1995 of the learned Assistant Sessions Judge, Panchmahal, at Godhra in Session Case No. 1 of 1995 convicting the present appellants No.1 for the offences punishable under Sec. 498(A) and 306 and convicting the appellants Nos. 2 and 3 under Section 498(A) is set aside and all the three appellants are acquitted of all the charges levelled against them. Fine if paid, be refunded to the respective appellants. Appellant No.1, who is in judicial custody be set at liberty and released from custody forthwith if he is not required in any other case. Appellants No. 2 and 3 being on bail, their bonds and bail bonds are ordered to be cancelled.

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